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APPROPRIATE MODALITIES AND GUIDELINES FOR THE PREVENTION AND CONTROL OF ORGANIZED TRANSNATIONAL CRIME AT THE REGIONAL AND INTERNATIONAL LEVELS

Background document

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INTRODUCTION

1. Pursuant to General Assembly resolution 45/108, the Ministerial Meeting on the Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme was held at Versailles from 21 to 23 November 1991. The Meeting spearheaded the integration and consolidation of efforts by the international community to prevent and combat transnational crime, as well as the strengthening of regional and international cooperation in combating all forms of crime. The Meeting was also the culmination of an intergovernmental review that had begun in 1985, aimed at strengthening the United Nations crime prevention and criminal justice programme and rendering it more responsive to the priority needs of its global constituency.

2. The World Ministerial Conference on Organized Transnational Crime will be meeting exactly three years later, at Naples, setting a new landmark in the fight against transnational crime. Its agenda bears witness to the growing concern of the international community about the threat posed by the increasing dimensions of organized transnational crime and its determination to act jointly at the highest level in order to devise viable and effective defence mechanisms.

3. The two meetings are linked by more than the coincidence of dates. In fact, the World Ministerial Conference would not have been possible if the meeting at Versailles had not set precise goals and priorities for the United Nations crime prevention and criminal justice programme, particularly in terms of international cooperation and efforts to prevent and combat transnational crime. In the three intervening years, the message conveyed by the international community at Versailles has been further elaborated and amplified through the combined action of the Commission on Crime Prevention and Criminal Justice, the Economic and Social Council and the General Assembly.

4. The Ministers gathered at Versailles stressed the need for the growing internationalization of crime to generate new and commensurate responses. The incidence and scope of transnational crime was going to increase further in the coming years unless Member States were put in a position to enact suitable preventive and control strategies. International cooperation represented the main strategy against transnational crime. Most problems arising in collecting evidence, extraditing offenders and solving conflicts of jurisdiction, which, in the past, had traditionally weakened inter-State fight against crime, could be eased through mutual assistance and cooperation.

5. In the statement of principles and programme of action of the United Nations crime prevention and criminal justice programme (General Assembly resolution 46/152, annex), the participants declared their determination to translate their political will into concrete action, inter alia, by establishing a framework for inter-State cooperation and coordination to respond to the serious new forms and transnational aspects and dimensions of crime. It was emphasized that one of the big challenges confronting the international community was to match any increases in the capacity and capabilities of perpetrators of crime with similar increases in the capacity and capabilities of law enforcement and criminal justice authorities. Less stringent border controls, designed to facilitate legitimate trade and development, were being exploited by organized crime, and the increased free movement of people accompanying democracy was creating new opportunities for crime. In order to combat the new developments, additional resources needed to be made available to developing countries and countries in which democracy was beginning to emerge. The role of the United Nations as the focal point for coordinating international efforts, setting up projects and acting as a clearing-house to match needs and resources, was acknowledged at the Versailles Meeting.

6. This challenge continues to occupy the international community today. It has become more daunting because of the rapid expansion and increasing sophistication of organized transnational crime. Cooperation at every level is urgently needed if the challenge is to be met.

7. The present report contains an overview of existing modalities of international cooperation and an analysis of the goals that should be achieved. In this analysis some of the basic concepts and prospects of international cooperation are also considered, in an effort to lay down guidelines that will enable it to respond more effectively to the changing characteristics of organized transnational crime and the corresponding needs of States.

I. INTERNATIONAL AND REGIONAL INITIATIVES

8. The first involvement of the United Nations in the issue of organized crime dates back to 1975, when the Fifth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva from 1 to 12 September 1975, examined the changes in forms and dimensions of criminality - transnational and national - under agenda item 5. At that time, the focus was on crime as business at the national and transnational levels: organized crime, white-collar crime and corruption. It was pointed out how, in addition to ordinary criminals who escaped detection, there were powerful perpetrators of harmful acts who wielded their power and influence with impunity to the detriment of the community as a whole. Crimes of corporations and "organized" or syndicated crimes had many similarities and might involve the corruption of law enforcement and political authority. They also tended to be characterized by a high degree of secrecy and, as "invisible" crimes, they were difficult to detect.

9. "Crime as business" was recognized as a more serious threat to society and national economies than traditional forms of crime. While "crime as business" was a serious problem in many developed countries, in developing countries the national welfare and economic development of the entire society might be drastically affected by such criminal conduct as bribery, price-fixing, smuggling and currency offences. Definitions of terms relating to that type of crime were often vague and ambiguous, as the issue had been neglected by criminologists.

10. The Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Caracas from 25 August to 5 September 1980, in its discussion of agenda item 5, "Crime and the abuse of power: offences and offenders beyond the reach of the law",[1] added new elements to the international perception of organized crime. Emphasis was placed on the concept of abuse of power in its various forms: political, economic and social. Abuses of economic, social and political power were often interlinked. For example, economic crime served as a causal and aggravating factor in the corruption of the governmental process and of public officials.

11. Among offences beyond the reach of law discussed under agenda item 5 of the Sixth Congress, there were those legally defined as crimes but with respect to which the law enforcement agencies were relatively powerless because of the high economic and political status of their perpetrators, or because the circumstances under which they had been committed were such as to decrease the likelihood of their being reported or prosecuted. Organized crime, bribery and corruption were among the first examples mentioned in the discussion.

12. It was noted that the lack of data on offences involving abuse of power was hampering a proper understanding of the problems involved and the development of more adequate means of combating them. Problems were posed by transnational corporations in the abuse of economic power, often because of the inability of the victimized country to deal with them effectively, especially if it was a developing country. International cooperation to combat corporate crime on a global basis was called for. It was also stressed how individual countries were not always in a position to fight corporate abuses that transcended national borders. An international strategy was needed to combat, deter and prevent corporate crime worldwide, beginning with an immediate compilation, study and analysis of all current

national and international laws in this area. With the emergence of new and more dangerous types of criminal activity, further studies were required on this issue.

13. It was becoming more and more evident that the growing activities of organized crime were posing a serious threat worldwide. The issue was considered further by the Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Milan from 26 August to 6 September 1985, under topic 1, entitled "New dimensions of criminality and crime prevention in the context of development: challenges for the future."[2] It was emphasized that multiple illicit operations carried out by international criminal networks represented a major challenge to national law enforcement and to international cooperation. National boundaries no longer constituted effective barriers against those criminal activities. By exploiting the discrepancies in the legislation of different countries, organized crime achieved a high degree of impunity.

14. In many parts of the world, great social alarm was caused by the deleterious impact of drug abuse on many young people. The illicit traffic in narcotic drugs was one of the main illegal operations conducted by organized crime. Corruption added to the difficulties of preventing and controlling such international crimes.

15. The Seventh Congress adopted the Milan Plan of Action,[3] in which it fully recognized the international dimensions of crime and the need for a concerted response from the community of nations to combat its various forms. It also emphasized how certain forms of crime could hamper the political, economic, social and cultural development of peoples and threatened human rights, fundamental freedoms, and peace, stability and security. The United Nations had a significant role to play in contributing to multilateral cooperation in this field. The Plan of Action was to be implemented as "the collective endeavour of the international community to deal with a major problem whose disruptive and destabilizing impact on society is bound to increase unless concrete and constructive action is taken on an urgent and priority basis."[4]

16. In 1990, within the framework of its topic III, "Effective national and international action against: (a) organized crime; (b) terrorist criminal activities", the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders examined the problem of organized transnational crime in the light of the new historic developments.[5] In fact, the rapid increase in the number of independent countries, together with a true internationalization of criminal activities, had created the need for new international institutions that could introduce a measure of order and enhance the effectiveness of crime prevention efforts.

17. In the past, a few States had jointly enacted cooperation policies as necessary. These activities had been on an ad hoc basis and were never institutionalized. The changes in the world balance had created a need for institutionalization of the relations of sovereign and independent countries in all areas, including relations in the area of criminal law. A considerable body of international criminal law had been developed in recent decades; its systematization was the next logical step.

18. The pernicious effect of organized crime on economic, political and social institutions was once more underlined. Criminal undertakings discouraged domestic and foreign investments and adversely affected the daily flow of economic activities, undermining economic growth as well as political and social stability. As the financial aspects of organized crime were very frightening, there was an urgent need for new legislation that would effectively deal with the attempts to launder the proceeds of crime.

19. It was becoming increasingly obvious that the problem could not be solved at the domestic level. The degree of sophistication attained by organized crime and its international dimension called for joint

efforts: domestic legislative action and administrative reform, together with coordinated international action.

20. More effective cooperation in crime prevention was possible, as had been demonstrated by some initiatives at the subregional level. Political will and the willingness to revise certain traditional approaches were necessary, together with substantial increases in technical cooperation at all levels. All countries had to be put in a situation in which they could participate effectively in the cooperative network. The United Nations crime prevention and criminal justice programme had to be strengthened to respond to the rising number of requests for assistance.

21. A substantive step towards international cooperation was made in 1990, when the General Assembly adopted the Model Treaty on Extradition (resolution 45/116, annex), the Model Treaty on Mutual Assistance in Criminal Matters (resolution 45/117, annex), the Model Treaty on Transfer of Proceedings in Criminal Matters (resolution 45/118, annex), and the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released (resolution 45/119, annex). In the resolutions, Member States are invited to take these model treaties into account when establishing treaty relations with other States, and to strengthen international cooperation in combating organized crime. The General Assembly also adopted resolution 45/123 on international cooperation in combating organized crime, in which Member States were urged to implement the Guidelines for the prevention and control of organized crime, contained in the annex to resolution 24 of the Eighth Congress,[6] and invited them to make available to the Secretary-General national legislation pursuant to that resolution.

22. On the basis of the above-mentioned appeals for cooperation in combating organized transnational crime, the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime was held in May 1991, at Smolenice. The Meeting, attended by experts representing the five geographical regions and by representatives of the International Criminal Police Organization/Interpol (ICPO/Interpol), strongly emphasized the urgent need to respond more effectively to transnational criminality, as the legal tools available to Governments were often not suitable for effectively combating new transnational manifestations of criminality, and it adopted a number of recommendations covering national, regional and international action to contribute to closer international cooperation (Economic and Social Council resolution 1992/23, annex I). In October 1991, an International Seminar on Organized Crime was held at Suzdal, which was attended by law enforcement officials and experts from 15 countries and ICPO/Interpol. The practical measures against organized crime formulated during the seminar included considerations concerning the nature, extent and impact of the problem and called for action in the fields of legislation, law enforcement methods, organizational structures, international cooperation and evaluation of the gravity of the threat (Economic and Social Council resolution 1992/23, annex II).

23. In the meantime, in pursuance of General Assembly resolution 45/108 entitled: "Review of the functioning and programme of work of the United Nations in crime prevention and criminal justice", the Ministerial Meeting on the Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme was convened at Versailles from 21 to 23 November 1991. It was recognized that, in the fight against crime, even the most strenuous efforts by any individual State would have little success unless supported by international cooperative action. Only the United Nations could effectively coordinate such action, by developing and implementing a concerted and truly international strategy directed at providing practical help. Technical cooperation and assistance were thus of paramount importance in that context.

24. The General Assembly, in its resolution 46/152 of 18 December 1991, took note with appreciation of the report of the Ministerial Meeting (see A/46/703 and Corr.1) and adopted the proposed statement of principles and programme of action, which, inter alia, called for the establishment of a commission on crime prevention and criminal justice. The Commission was established by resolution 1992/1 of the

Economic and Social Council, as one of its functional commissions. At its first session, held from 21 to 30 April 1992, the Commission further underlined the importance of international cooperation to counteract crime and in section VI of its draft resolution I, adopted by the Economic and Social Council in its resolution 1992/22, indicated as one of the priorities of the programme national and transnational crime, organized crime, economic crime, including money-laundering, and the role of criminal law in the protection of the environment.

25. Of the two draft resolutions on the subject adopted by the Commission at its first session, the first (see Council resolution 1992/22), as already noted, established that transnational, organized and economic crime had to be priority themes for the United Nations crime prevention and criminal justice programme. The second (see Council resolution 1992/23), noting the recommendations of the Ad Hoc Expert Group Meeting on Strategies to Deal with Transnational Crime and the International Seminar on Organized Crime, requested the Secretary-General to continue the analysis of the impact of organized criminal activities upon society at large. The Commission, at its first session, also requested the Secretary-General, inter alia, to examine the possibility of coordinating efforts made at the multilateral level against laundering of proceeds of crime and related offences, and to propose means for rendering technical assistance to requesting Member States in drafting legislation, training law enforcement personnel, in developing regional, subregional and bilateral cooperation and in providing advice.[7]

26. In view of the activities and decisions described above, the General Assembly, in its resolution 47/87, requested the Commission on Crime Prevention and Criminal Justice to organize the ongoing review and analysis of the incidence of transnational organized criminal activity and the dissemination of information thereon, and called upon Member States, international organizations and non-governmental organizations to cooperate with the United Nations in organizing practice-oriented workshops, research projects and training programmes to deal with organized criminal activities.

27. In 1993, the Economic and Social Council adopted three resolutions recommended to it by the Commission on Crime Prevention and Criminal Justice at its second session. In the first one (resolution 1993/29) the Secretary-General was requested to organize a World Ministerial Conference on Organized Transnational Crime, to be held in 1994 in Italy, the Government of that country having offered to act as host.

28. In the second resolution (resolution 1993/30), the Council called, inter alia, for technical assistance to be provided for the prevention and control of the proceeds of crime. The crucial role of the United Nations crime prevention and criminal justice programme for the promotion of international cooperation in crime prevention and criminal justice and in responding to the needs of the international community in the face of both national and transnational criminality was then reaffirmed by the Council in its resolution 1993/31 and later by the General Assembly in its resolution 48/103.

29. Organized transnational crime continued to be a topic for the Commission on Crime Prevention and Criminal Justice at its third session, where the discussion on this issue was reflected in three draft resolutions subsequently adopted by the Economic and Social Council. The first resolution (Council resolution 1994/12), on organized transnational crime, to which was annexed a discussion document on the World Ministerial Conference on Organized Transnational Crime, highlighted the importance of the Conference as a means of reaching agreement on the adoption of a series of measures against organized crime, including the establishment of a common perception of organized crime within the international community; the punishment, under national law, of participation in a criminal organization; confiscation of the proceeds of crime; the development of investigative methods to penetrate criminal organizations, including specialized investigative units; the development of international agreements for extradition, mutual legal assistance and the improvement of practical application of existing model treaties in these fields; technical cooperation, including the international exchange of intelligence and the training of law

enforcement personnel; economic compensation for victims; and the feasibility of elaborating international instruments, including conventions, against organized transnational crime.

30. The second resolution (Council resolution 1994/13) was devoted to the control of the proceeds of crime, in which the Council recommended that the World Ministerial Conference on Organized Transnational Crime should take into account the conclusions and recommendations of the International Conference on Preventing and Controlling Money-Laundering and the Use of the Proceeds of Crime: a Global Approach. The Council also requested the Secretary-General, taking into account the work already carried out by Member States and intergovernmental organizations, to cooperate with them in the inclusion of anti-money-laundering provisions in national legislation and in the organization of training and assistance programmes.

31. In the third resolution (Council resolution 1994/14), on criminal justice action to combat the organized smuggling of illegal migrants across national boundaries, the substantial role played by organized transnational crime in illegal migrants smuggling activities in many parts of the world was recognized. The Council also called upon Member States and relevant specialized agencies and international organizations to cooperate, at the bilateral and multilateral levels, in tackling all aspects of the problem of the organized smuggling of illegal migrants, against which States should take prompt and effective countermeasures.

32. The involvement of organized transnational crime in an increasing range of activities was further stressed by the Commission on Crime Prevention and Criminal Justice through a resolution on international traffic in minors,[8] in which the Commission, being aware that this activity was carried out by criminal organizations that had transnational connections, and calling upon Member States to consider ways of enacting legislation to combat this traffic and to promote cooperation amongst them, decided that international traffic in minors should be considered by the Commission at its fourth session in the context of its discussion on organized transnational crime.

33. In the field of drug abuse control, it should be recalled that in 1988, the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (E/CONF.82/15 and Corr.2) was adopted. This Convention represented one of the first and most important international binding instruments drawn up to combat organized transnational organizations and one of their most lucrative activities. The Convention foresees, inter alia, criminalization of the laundering of the proceeds of drug trafficking and calls for international cooperation and assistance, including the development of means such as extradition, mutual legal assistance and transfer of proceedings. In 1990, the General Assembly adopted the Political Declaration and the Global Programme of Action (resolution S-17/2, annex) against illicit production, supply, demand, trafficking and distribution of narcotic drugs and psychotropic substances, activities which strengthened transnational criminal organizations.

34. Regional initiatives enjoy a considerable advantage because of their two main characteristics. They are pursued in an environment where there are fewer cultural differences and fewer problems of compatibility between different juridical systems. In addition, such initiatives are designed to cope with specific problems and often complement other political and economic joint efforts and schemes. The results achieved in terms of convergence and compatibility of policies within regions can be considered as a very important first step in strengthening the process of worldwide action and more meaningful and effective international cooperation. The solutions selected to deal with common problems and to overcome obstacles, which still exist in spite of the prevailing homogeneity, can serve as useful examples of effective cooperation at the global level.

35. Regarding more effective forms of inter-State cooperation, examples can be found in a number of regional settings, like the Council of Europe and its network of conventions,[9] the European Union and

its recent efforts to improve cooperation in criminal matters on the basis of the Maastricht Treaty, including the establishment of EUROPOL, the Organization of American States and its Inter-American Drug Abuse Control Commission (CICAD), the League of Arab States and the Commonwealth Secretariat, or in other groupings like the "Schengen States",* the "Nordic Scheme",** and the Benelux States.*** Each regional group has developed different instruments responding to their needs, but these patterns of collaboration represent, simultaneously, a trend, as well as a way towards improved mutual cooperation.

36. The instruments so far developed were the outcome of the ever-growing concern of States about offences with transnational aspects. While mutual assistance and extradition remain the backbone of regional cooperation, new arrangements have been elaborated, which include transfer of criminal proceedings, execution of foreign criminal judgements and transfer of prisoners. While the first, transfer of proceedings, was envisaged as a means of ensuring the prosecution of the accused where extradition was denied, the other two are based on the transfer of the last phase of a criminal case, and on the execution of a penalty on humanitarian grounds as well, since the convicted person is allowed to serve the sentence in his or her own country.

37. Regional initiatives have at least one common characteristic. Their origin lies in bilateral arrangements and cooperation schemes of a more or less informal nature but they have evolved into essential multilateral instruments of cooperation. In many instances, the multilateral arrangement is a framework for compatible and dynamic bilateral cooperation on various fronts. In others, multilateral instruments have built on the experience of bilateral arrangements and have advanced towards common and concerted action of specific proportions and against specific problems. In all cases, regional cooperation has evolved through the convergence of policies and a gradual confidence-building phase, reflecting the need of States to protect jointly their common interests and values. Another element of considerable importance is the realization by States in a given region of the fact that reliance not only on their own capacity but also on that of their neighbours is crucial in overcoming obstacles to their well-being. A direct consequence of this realization is that the concessions that are necessary in every type of cooperation and genuinely joint action are viewed as long-term gains rather than as losses.

38. In addition to the homogeneity of the countries involved, in historical, geo-political and cultural terms, regional initiatives enjoy another advantage. More often than not, the divergences between the countries of the same region or at the same stage of development are not dramatic, and are effectively counterbalanced by other cohesive factors.

39. One of the most innovative aspects of regional instruments is the fact that the principle of territoriality is weakened and the question of sovereignty is approached in a new way. Serious obstacles to international cooperation result from the jurisdictional conflict between the courts of two States, when the territorial principle and the active personality principle are asserted. While the choice between the two principles would normally be based on the character of the offence, it is often suggested that

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*The Schengen Agreement between the Governments of the States of the Benelux Economic Union, the [then] Federal Republic of Germany and the French Republic [later joined by Italy, Portugal and Spain] on the Gradual Abolition of Checks at their Common Borders was signed on 14 June 1985 and led to the Convention of 19 June 1990 applying the Agreement.

**Denmark, Finland, Iceland, Norway and Sweden have developed a system for harmonizing their domestic laws. This "uniform" legislation is aimed at improving inter-State cooperation in criminal matters.

***The Benelux Extradition Convention is one of the oldest regional mechanisms for cooperation, dating back to 1962.

obstacles are overcome, for example, by having simpler cases transferred at the stage of preparatory proceedings whereas other cases are transferred after sentencing.

40. In spite of their definite advantages and the inroads they have made, regional schemes are by no means a panacea. Transnational organized crime is known for its versatility and increasing sophistication, as well as its mobility. Regional arrangements and instruments deal with the problem in exactly the area they are designed to cover. It could be said that their effectiveness is simultaneously their limitation. While countries covered by a regional arrangement may enjoy relative security from, and score successes against, organized criminal groups located or operating within the region, it is inevitable that they will have to face the effects of these groups relocating outside the region and continuing to target that region as a whole. Eradicating the problem from a group of countries does not necessarily mean solving it. Relocation is a mechanism that does not entail much more than perhaps additional and unforeseen expenses for a well-organized criminal group. It may also imply an improvement of its operations and a more structured approach to its efforts to maximize opportunities. The effectiveness of a regional arrangement may also result in shifting the burden to other countries and regions less equipped to deal with it and less capable of doing so. The lack of a comprehensive mechanism based on such instruments, and intended to be the standard by which their usefulness is measured, becomes evident. These tools were often elaborated as a first response to criminal behaviour characterized by transboundary elements. Consequently, their creation was not followed by their systematization or by a mechanism extending their reach beyond certain limits. As a result, a general priority scale applicable to different situations in different settings does not exist.

41. The body of knowledge and expertise acquired in years of commitment may represent the benchmark for the international community when it has to identify the tasks that are to be accomplished to achieve the target of a world of peace, democracy and justice for all. They represent valuable tools for the international community at a time when international cooperation appears to be the only effective weapon against organized transnational crime.

II. BASIC PRINCIPLES OF INTERNATIONAL COOPERATION

42. Any discussion of international cooperation will necessarily involve a clear understanding of priorities and objectives. International cooperation on a particular issue, such as the ability of criminal justice systems to prevent and control organized crime, implies a thorough knowledge of the risks involved both in the short and long term. In addition, it requires an accurate assessment of the capacity of the criminal justice system to deal with complex forms of crime. A combination of these parameters, with the appropriate balance, would serve to put international cooperation into perspective. Only knowledge and careful evaluation can lead to the appropriate selection of priorities and objectives. Policy makers at the national level, those ultimately capable of and responsible for building, sustaining and advancing international cooperation, as well as setting its pace, need this knowledge to guide them towards rational decisions. Policy makers also have to be able to strike the appropriate balance between competing interests, both political and financial. The world today is characterized by limited resources. Balancing the multiple interests competing for these resources is difficult for every Government, regardless of its level of development. International cooperation requires undivided attention and genuine commitments at all levels of Government for the pooling and allocation of the resources commensurate to the risk posed to the international community by organized transnational crime.

43. Organized crime groups are becoming increasingly transnational, both in scope and activities. They achieve this by pursuing two main strategies: minimizing the "law enforcement risk" and maximizing the opportunities available for illicit profit. Minimizing the law enforcement risk means calculating the sum of the probabilities of being identified, apprehended, prosecuted and convicted.

Together with the exploitation of market opportunities and the creation of new ones, these are the essential components of what may be termed "illegal enterprise's risk", the risk that organized criminal groups are prepared and willing to incur for carrying out their activities in more than one country. From the point of view of societies and Governments, there is yet another risk, the "transnational organized crime risk", which refers to the probability that organized crime groups will expand their structures and activities in countries other than those in which they were initially located. The two risks are related, the variables that are the main components of the one being the reverse image of the variables that make up the other.

44. The transnational organized crime risk tends to increase when the illegal enterprise's risk for the organized crime groups is unequally distributed among countries. Organized crime groups will tend to internationalize and expand in countries where the opportunities are greater and the law enforcement risk is lower. The more equally the risk is distributed among countries, the less the organized criminal groups will be tempted to displace their activities outside the countries where they are traditionally located. In other words, the greater the external risks for organized criminal groups, the lesser the probability that they will internationalize their activities.

45. Controlling the international distribution of the illegal enterprise's risk should be the objective and indeed the rationale for cooperation among countries, especially in the area of law enforcement and criminal justice. As has already been emphasized, a more effective response to transnational criminality has become a matter or urgency, particularly in view of the growing exploitation by transnational criminals of traditional principles and the practice of sovereignty and territorial jurisdiction (see Economic and Social Council resolution 1992/23, annexes I and II).

46. The legal tools available to Governments are often found to be unequal to the task of effectively combating the new transnational manifestations of criminality and it is therefore through their attacks on traditional principles and sovereignty that organized criminals have succeeded in carrying out their illicit operations at a considerably lower risk to themselves.[10] If criminal organizations are attracted to the process of internationalization because they have found areas where the risk from the law enforcement authorities is minimal, then coordinated international action to equalize this risk in various countries will minimize or contain the process. Equalizing the risk means raising the quantity, quality and, more importantly, compatibility of preventive control action at an adequate level on a worldwide scale and putting in place mechanisms designed to maintain and improve that level in a consistent and coordinated fashion.

47. While controlling the illegal enterprise's risk means reducing illegal opportunities and vulnerability to a level sufficient to discourage, or at least not attract, transnational crime, controlling the distribution of the transnational organized crime risk is a matter of distributing the policies directed at the control of crimes and at authors of those crimes. The ultimate aim of this process would, therefore, be to secure an optimal distribution of risk among countries.

48. One of the fundamental objectives of international cooperation and technical assistance in this field would be to ensure that all countries reach some minimum common areas of preventive and control policies and constantly cooperate with others in order to maintain a minimum common level of reaction. This process implies, first of all, dealing with a series of questions that have to be answered to determine the most appropriate strategies and policies for increasing the risk for organized crime and, at the same time, equalizing it among countries.

49. The main questions concern the goals the international community wants to achieve; the degree and dimension of convergence and compatibility needed to counteract transnational crime; which policies need to be made compatible; the ways in which the goals can be achieved; what countries require to

embark successfully on this task; and the mechanisms that could provide the impetus for convergence and compatibility, as well as coordinating them.

50. The preceding questions lie at the root of the philosophy of international cooperation and technical assistance in crime prevention and criminal justice matters. The discussion on the rationale for international cooperation and the factors inhibiting its effectiveness (see E/CONF.88/2) is bound to centre on an inherent difficulty. Experience has shown that there often appears to be a gap between the rhetoric and the substance of international cooperation.

51. There seems to be both a ritual and a practical approach to international cooperation. The former involves public declarations regarding the will of the international community to take action in criminal justice matters and an emphasis on a growing list of initiatives in international settings. At the practical level, what is at issue is the actual cooperation between one or more countries in compiling information, sharing intelligence, collecting and preserving evidence, arresting a fugitive, freezing or confiscating assets of criminal origin, and extraditing or prosecuting criminals.

52. These are two sides of the same coin. The political will and unwavering commitment behind international cooperation constitutes the framework for operations at the practical level. In some ways, they can be reconciled on the basis of a compromise between the collective interest and the individual interests countries have in criminal justice matters. International cooperation can be effective only if its efforts are producing more advantages for all countries - and consequently for the international community - than a single country can achieve through individual action.

53. This process of reconciliation will happen more easily when the effectiveness of international cooperation, and countries' individual interests become recurrent and reciprocal. The more countries become aware of the difficulties and costs of dealing individually with criminal justice matters, the more likely they are to regard international instruments and mechanisms as the solutions to their problem. Consequently, the more they legitimize international cooperation, and the more legitimized international cooperation is, the more effective it will become. Success will breed success and more countries will enter international agreements with greater enthusiasm, making international cooperation once again more and more effective. If this process is not primed, international cooperation will remain a rite, with little substance.

54. Another issue of central importance, and one directly linked to the fundamental concept of international cooperation, is technical assistance. Effective international cooperation often depends on the capacity of the criminal justice system of a given country. Raising the level of knowledge, expertise and professionalism of a criminal justice system requires resources that many countries lack. Technical assistance is then the only way of ensuring that structural difficulties are overcome. The provision of technical assistance can take many forms, depending on the needs of the recipient and on the availability of donor resources. Technical assistance can range from advisory services to the provision of equipment, and will almost invariably include specialized training. The planning and execution of technical assistance projects require constant cooperation and consultation with the competent authorities of the recipient country at every stage of the process. Particular attention should be given to ensuring that assistance is based on the actual needs of the country in question, to be determined by that country, if necessary in consultation with those providing the assistance. Assistance needs to be tailored not only to the specific needs but also to the political, cultural and legal traditions of the recipient country. It should be realized that measures and policies that have proved effective in dealing with a specific problem may need to be substantially modified to retain their effectiveness in different settings or systems. In many cases, the very basic principles or rationale of action are the only elements that can be retained, and new measures and policies have to be designed. A failure to structure and deliver

technical assistance on these grounds risks not only rendering such assistance entirely ineffective but also creating an environment that is far from conducive to meaningful cooperation.

55. The overall capacity and stage of development of the criminal justice system are factors that should be taken into account in all technical assistance efforts, particularly when such assistance is intended to help the recipient country to deal with organized transnational crime. Because of the sophistication of this form of crime, assistance is often aimed at strengthening or improving legislative and law enforcement measures. Such interventions, however, need to be planned and developed on the basis of a thorough knowledge of the criminal justice system in question and its overall capacity, as well as on a careful evaluation of their impact on that particular criminal justice system. For example, the establishment of a special investigation unit for offences related to the laundering of the proceeds of crime may improve the detection and apprehension of money-launderers. Its successes may, however, be frustrated if the prosecuting and judicial authorities are not in a position to evaluate and use the evidence that the efforts of that unit have yielded.

56. Another issue that needs to be carefully considered is coordination. Multiple assistance projects are directed almost simultaneously at the same component of the criminal justice system, overlapping if not conflicting with each other. The result is an unnecessary duplication of effort, which may lead to confusion among recipients and thus render technical assistance ineffective. Coordination is necessary on the part of all concerned and should be viewed as an essential complement to the structured and thorough preparation and provision of technical assistance. Without it, the resources devoted to such assistance fail to achieve the intended goals.

57. The traditional rationale for technical assistance, either in drafting new legislation or in training criminal justice personnel, is to help countries to cope more effectively with their problems. The global situation has radically changed in the past few years, however, and so have the needs and goals of the international community. Technical assistance needs to be viewed in the context of the new political and economic realities and to be adapted to them, in terms of both concept and objectives. Technical assistance programmes should be designed to enable countries to equalize the organized crime risk and to do so in such a way as to contribute to the collective interest in deterring the expansion of organized crime.

58. If this objective is missed in planning and providing technical assistance, such assistance will remain a solidarity tax that developed countries pay directly or through multilateral mechanisms. It will be welcomed, but not enough, and the more countries are constrained by limited resources, the less technical assistance they will provide. It is essential, therefore, that technical assistance become more and more a productive investment for three different types of interests: those of the countries receiving assistance, those of the countries giving it and those of the international community.

III. THE PROCESS OF CONVERGENCE

A. Goals

59. The main goal of convergence will be to reduce the transnational organized crime risk and equalize the illegal enterprise's risk. In doing this, an understanding of strategies and targets is vital.

60. The overall strategy of international cooperation should be to encourage and promote a gradual but consistent convergence of preventive and crime control policies among countries, in order to render them equally effective. Preventive policies are designed to reduce the opportunities for criminal activity

and to minimize the vulnerability of legitimate businesses to the infiltration of organized crime. Crime control policies, in contrast, are intended to control the crimes committed by organized crime groups.

61. The targets of preventive policies are to build and maintain a consensus of public opinion, creating and strengthening conditions of legality and morality, and establishing and promoting the transparency of the financial systems. The targets of crime control policies are the criminals and their illicit assets. Both persons and assets are the key elements of the organizational structure of organized crime groups.

62. Once the goals of international cooperation have been identified, the scope of their convergence will have to be determined. The danger posed by organized transnational crime and its effects point in the direction of a convergence of global scope. It should be kept in mind, however, that obtaining a worldwide consensus on an accepted set of policies against organized transnational crime is bound to be a process of increased involvement and integration among countries and regions. This process requires strong commitment on the part of the entire international community and a will to smooth out differences and overcome difficulties. The process has begun, however. Owing to the emergence of illicit drug trafficking as a global phenomenon, there are more similarities today in the policies of different countries to combat this form of crime than there were 10 years ago. The role of international and regional mechanisms in this area has been essential for nurturing and facilitating this process. Policies directed at the equalization of the law enforcement risk will require not only a similar realization on the part of the international community but also a more comprehensive approach.

63. The strictu sensu interpretation given to cooperation and assistance in the past limited such activity to a case-by-case relationship between the competent authorities of one State and those of another, supporting judicial or quasi-judicial proceedings. This form of cooperation, based on the needs of one country and on the requirement of reciprocity, began to reveal its limitations when it came face to face with the internationalization of organized crime. The characteristics of organized crime groups, namely secrecy, internal solidarity and structure, made it a peculiar phenomenon. It soon became self-evident that organized crime, particularly in its transnational forms, had dimensions that could not be dealt with by traditional law enforcement schemes.* Investigation, detection and prosecution were therefore seen to be critical issues in the fight against organized crime, in part because major problems arose from the lack of coordination between the legislative and law enforcement bodies in the countries concerned. It is thus clear that mechanisms are needed, covering all forms of cooperation and assistance, from police investigation to judicial proceedings, which will encourage the law enforcement authorities of countries affected by specific organized crime activities, to collaborate among themselves and work together effectively to deal with organized transnational crime.

64. The efforts of Governments to secure more effective international cooperation may be used as a springboard for mechanisms that have already been tested, even if only as informal judicial assistance arrangements or collaborative transfrontier investigations. Admittedly, these arrangements often entail many more concessions on the part of Governments than would be the case in more formal bilateral agreements. The successes scored by regional cooperation, however, constitute ample proof of the validity of this type of collaboration. "Hot pursuit" and cross-border observation are examples of fruitful techniques implemented in a regional setting. Unlike traditional and more formal agreements of judicial assistance, no specific action is required by foreign authorities in terms of proceedings. The informal

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*For an overview of the current state of development and needs in international cooperation against organized transnational crime, see Economic and Social Council resolution 1992/23, annex I, and the report of the Secretary-General on the impact of organized criminal activities upon society at large (E/CN.15/1993/3), submitted to the Commission on Crime Prevention and Criminal Justice at its second session.

arrangements are primarily based on the mutual understanding that independent investigations by foreign law enforcement officers will be accepted and assisted.

65. While the basic premise of these arrangements is a working and often personal relationship between law enforcement officers, the process of confidence-building can serve as a model for arrangements of a broader scope and territorial coverage. Such confidence-building could be actively pursued, particularly under the present favourable political conditions, for example through the regular exchange of information and personnel. It is no doubt a slow process and may encounter certain obstacles. It can nevertheless make a significant contribution to establishing more formal arrangements and building an institutional framework for international cooperation. This contribution would consist in fostering and improving a better and more direct understanding of specific problems and methods of work, as well as cultural, political and legal traditions. The knowledge obtained would be crucial in modifying or designing policies that would be compatible and, therefore, conducive to international cooperation.

66. Governments may need to consider reviewing their criminal policies from both the substantive and the procedural perspective. From the substantive point of view, attention should be paid to the criminalization of certain forms of behaviour. The experience gained in the countries where organized crime is criminalized by comprehensive and appropriate legislation should encourage the elaboration and adoption of similar laws. This could be done in a concerted manner, thus avoiding discrepancies among the various countries and promoting the convergence of mechanisms and policies. The international debate on organized transnational crime has already reached some landmark points and this should testify both to the awareness and the willingness to fight it in a concerted and coordinated fashion. From the procedural point of view, Governments would need to consider issues related to traditional concepts of sovereignty and individual decision-making in the light of problems posed by new criminal activities. The realization at the political and decision-making level of the actual magnitude and complexity of organized transnational crime may serve as a basis for elaborating improved forms of international cooperation, drawing on the pool of knowledge and experience in the scientific community.

67. The differences between civil law and common law systems have not prevented international cooperation in the past. The long-standing tradition of bilateral treaties and multilateral conventions supports the idea that, where agreement is reached on a topic, mutual cooperation may run smoothly. The problem is how to develop strategies and techniques that will reduce the number of obstacles to international cooperation. The most recent instruments of international criminal law could provide useful suggestions to that end.

68. While there has been a trend towards progressive internationalization in the expansion of criminal organizations, experience has shown that organized crime groups have tended to begin extending their operations in countries close to their areas of origin, when these countries afforded better conditions for avoiding the law enforcement risk. This preference, stemming from migratory movements, greater knowledge of the economic and social systems and even familiarity with the language, is revealed by the dynamics of many organized groups now generally considered as transnational.

69. The Chinese Triads have expanded in Asia, as has the Sicilian Mafia in Europe, and the Colombian cartels have put out their tentacles in Latin and Central America, while the Russian criminal organizations have extended their activities to other countries of the Commonwealth of Independent States and to the countries of Eastern Europe. The process of internationalization that allows these well-established groups to operate in areas of the world far away from their traditional location originally began within the region. In order to prevent the development or expansion of other groups the regional dimension must be taken into account when policies and mechanisms are devised for the prevention and control of criminal activities.

70. Efforts in this direction will not begin to bear fruit until bilateral formal or informal cooperation has started to develop between countries of the same region. The convergence of policies and measures in the various regions of the world complements the promotion of wider international cooperation and the establishment of effective international mechanisms. International cooperation, however, also requires the active support of the international community not only in terms of resources but also through political commitment.

71. For regional and international cooperation to succeed, Governments would have to interact actively with the international and regional organizations concerned and facilitate their work by providing expertise, information and resources; initiatives related to the provision of technical assistance would also require support.

72. At the international level, cooperation is to be sought, first of all, for the purposes of criminal investigations and proceedings aimed at confiscating the proceeds of crime. Assistance should be provided at the investigative level, either to identify and trace the proceeds, or to seize or freeze property. At the court level, foreign prosecutors may need assistance in enforcing a decision to confiscate. The question of handing over the confiscated property to the countries concerned, or sharing it with them, deserves particular attention, because it could well encourage these countries to become more involved in the fight against organized transnational crime.

73. An important issue in international cooperation in criminal matters is the consideration given to the basic rights and guarantees afforded to the prosecuted or convicted individual.[11] Significant results in international cooperation have been achieved by countries that share the same cultural and political values, while there is a reluctance to extend full cooperation to countries that do not guarantee the enforcement of the same ideals.* The issue of human rights is certainly one the international community must consistently pursue, but the protection of individual rights can surely be reconciled with the protection of the rights of society as a whole. Thus, bearing in mind the well-entrenched results of the democratic process, new strategies and techniques ought to be developed for improving international cooperation, while continuing to promote the universal protection of human rights.

B. Compatibility of policies

74. Combating organized crime involves a mechanism of strategies and policies that need to be strengthened inside a country. International cooperation must therefore be aimed at harmonizing those strategies and policies in different countries.

1. Preventive policies

75. One of the key issues is how to secure the compatibility of policies designed to reduce illegal opportunities for criminals. In the case of organized crime, a policy can be geared towards reducing the demand for illegal goods and services, or evaluating the impact that different approaches to that end may have.

76. Policies aimed at reducing illegal opportunities, decreasing the demand for illegal goods and services or attempting to regulate them would arguably be more effective if developed and applied at an international level. If there are territories where the demand is greater than in others, or if illegal goods are made legally available in some countries, organized crime groups will be attracted to the place

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*In the Council of Europe, for instance, 85 per cent of the extraditions are between member States.

where the difference in policies affords them better opportunities and they will develop their patterns of internationalization accordingly.

77. Markets are becoming global, and constant communication and growing interdependence increases both legal and illegal opportunities, making it more difficult to control them in the absence of international forms of regulation. Just as national enterprises look for opportunities in other countries, criminal enterprises exhibit the same attitudes and adopt the same behaviour in illegal but also in legal markets. As regulation of legitimate business is becoming more and more international and regional, similar policies are needed to counter the problems posed by organized crime.

78. One question of the utmost relevance and importance is how policies aimed at diminishing the vulnerability of legitimate industries to infiltration by organized crime groups can be made compatible. The convergence of policies that can produce the maximum level of transparency and competition in legitimate markets would be a step in the right direction. By promoting the flow of information and public scrutiny of legitimate business, transparency creates a shield against organized crime groups. Competition operates largely the same way by preventing an unlawful concentration of business power and by equalizing business opportunities. The European Union, for instance, has had considerable experience in these areas and has been engaged in regulating economic activity in the European market so as to reduce the risk of monopolies and tackle the problem of transparency of the financial systems through money-laundering legislation as well. Expanding the area of economic activity to encompass industries previously limited to one country and ensuring guarantees for open markets is a step towards minimizing the risk of infiltration of these activities and industries traditionally "protected" from foreign competition by organized crime groups.

79. The convergence of preventive policies in the area of corruption of public officials could be pursued and extended, inter alia, to corporate accounting and reporting procedures and tax examination policies that help to make it more difficult to generate illicit money for corruption purposes. The use of standardized codes of conduct for economic enterprises and public administration could also be promoted. The work of the United Nations and other intergovernmental organizations and the experiences in this area of particular countries may pave the way to a comprehensive process of convergence.

80. Money-laundering is an area in which the convergence of preventive policies has been developed more fully through a comprehensive set of measures, evolved in a number of countries and at the international level by intergovernmental entities. The starting point for equalizing the illegal enterprise's risk for organized crime groups is for all countries to begin to devise homogeneous policies for reporting suspicious transactions and to implement procedures for securing the identification of customers who use their banking and financial institutions. For non-banking financial institutions, licensing procedures may be necessary in order to prevent organized crime groups from using them as an alternative to the more regulated banking system. These preventive policies are strictly linked to criminal policies in the same area.

2. Crime control policies

81. The range of crime control policies is broad and includes substantive and procedural legislation, special programmes and law enforcement methods and their organization. Many of these policies for combating organized crime differ according to legal traditions and systems, the perception of the problem, the skills and capabilities of criminal justice system personnel, the level of organization of the criminal justice system and, more importantly, the level of resources available for the criminal justice system and its management.

82. In identifying policies that need to be made compatible, certain criteria have to be applied. In the present context, the need for compatibility is related to the equalization of the law enforcement risk in different countries in order to deter the internationalization of organized crime groups. Consequently, the maximum degree of compatibility among policies of different countries will be achieved when such policies are perceived by the organized crime groups themselves as having an equalizing effect. Compatibility is an important step towards achieving substantive international cooperation, because it helps to increase the capacity of different systems to work together.

83. The conditions for the convergence of domestic crime control policies are mainly two: the demonstrated effectiveness of these policies and some degree of flexibility in achieving compatibility with other policies of the same kind. On the basis of these criteria, the responsiveness of existing policies against organized crime to the need for compatibility of the law enforcement risk among different countries are to be analysed and evaluated.

84. The different legal traditions of civil and common law systems may account for many of the differences between countries. It is important that, beginning at the regional level and eventually extending to the international level, countries should achieve a common realization that crimes committed by an organized crime group represent a bigger threat than those committed by an individual or a casual organization.

85. The existence of organized crime groups is a threat per se. It is self-contained, because a criminal group is established with a view to committing any activity worth being exploited, striving to build it up and exercising the power that goes with it.

86. The increased risk to organized crime that crime control policies would be aiming at relates to the two targets mentioned earlier, persons and assets. Regarding the former, the core element of these policies would be the sanctions inflicted upon members of organized crime groups, when arrested, prosecuted and convicted, while for the latter it would be forfeiture and confiscation of the assets resulting from, or used in, criminal activity.

87. Reference should be made at this point to a set of policies involving a form of simultaneous prevention and control. These are policies traditionally used to interdict transnational movements of people. They have been concentrated on two main related issues: control of the borders and immigration laws. Although these policies are not specifically designed to equalize the law enforcement risk for organized crime groups, their adoption and implementation can have certain positive effects.

88. Traditionally, control at borders for the purpose of tracing criminals has not been a very effective tool against criminals who have a wide range of activities. Furthermore, even though some law enforcement operations have been helped by border checks, organized criminals have been accustomed to using fake documents or crossed uncontrolled borders. The usefulness of border checks for tracing criminals may have to be carefully evaluated in view of their heavy cost. In many cases, personal interdiction for criminals, in the sense of apprehension, may be less effectively achieved through border controls. The policy is much more effective in controlling migration flow, which is the main object of contemporary systems. The combination of border and immigration controls can be a very effective system for monitoring foreigners operating inside the countries and for collecting valuable intelligence.

89. Frequent analyses of the data on immigrants, categorized by nationality, place of birth, former place of residence, profession or work performed and new place of residence, can be useful in monitoring the migration of criminals and in some cases in alerting authorities to their infiltration of legitimate businesses. In a multi-ethnic world, these controls are difficult to maintain over a long period. For the purpose of controlling the organized crime risk, however, countries could plan to establish

databases and implement some forms of immigrant monitoring and control for a short period, usually the time a criminal needs to settle down in the new society and begin to exploit its structures. These databases would be even more useful if they were shared on a regional basis.

90. Interdiction policies can work better against instrumentalities of crime through modern technology. Detection of illegal money, drugs, chemical precursors, weapons and other kinds of material supplied by organized groups is at present either haphazard, or managed through informants. Recent developments of computerized scanner technology can now monitor the movement and flow of goods much more effectively than in the past, making it more difficult for organized crime groups to smuggle illegal merchandise across the borders.

91. Interdiction policies need to be carefully structured and, where necessary, reshaped in accordance with present circumstances and realities, since the risk of organized crime is concurrent and linked with the worldwide trend of closer international relations, the opening of borders to free trade and the uninhibited circulation of persons, goods and capital. Global markets are becoming a reality and the risk of this trend being exploited by organized crime groups is clear and present.

92. The challenge is how to continue to pursue free trade and open border policies without compromising security and peace. The answer may lie in the increased use and development of new technologies. Admittedly, new technologies are expensive and require a substantial investment, which many countries may find difficult to make. However, a cost-benefit analysis should be made, in view of the efficiency and effectiveness of new technologies. In terms of management of criminal justice systems, international cooperation would stand to benefit from a rational approach to the issue in order to ensure that the most effective and appropriate technologies are applied at key points and possibly shared with other countries, at the same time keeping in mind the need for compatibility.

93. Legislation, both substantive and procedural, occupies a prominent place among policies to combat organized transnational crime. It remains one of the primary tools at the disposal of Governments for the purpose of protecting the values and security of their societies and fostering growth and development. Legislation, however, needs to be dynamic and to adapt itself to, if not to foresee, developments. In the case of organized transnational crime, legislation should be developed with a view to fostering international cooperation and concerted action. Legislation should be structured and elaborated in such a way as to deal severe blows to organized crime groups at points where they would be most effective. One of these points is the organizational structure of criminal groups. Targeting this structure permits authorities to crack the shell of criminal groups and follow the thread leading to the top, effectively dismantling the organization. The offence of "participation in an organized criminal association", as included in Italian law since 1982, and the offence of "participation in the affairs of an enterprise through a pattern of racketeering", as described in the 1970 Racketeer Influenced and Corrupt Organizations (RICO) statute of the United States of America are intended to deal with the existence and the functioning of an organization devoted to committing crimes.

94. Creating such offences, or strengthening and adapting provisions that foresee similar offences in substantive legislation, will allow criminal law to attack the organizational structure of the organized crime groups perhaps even more than the crime of conspiracy alone could do. Experience in applying these two types of offence has had a very positive influence on the fight against organized crime in both Italy and the United States. In the Italian experience, the offence of participation in an "organized crime association" has been decisive in successfully prosecuting and convicting many Mafia bosses in the first "maxi-trial" against the Mafia in Sicily. In the United States, the RICO statute is generally considered to be the starting point of a new process of awareness of organized crime by the United States Government and its criminal justice system. Its effectiveness has been demonstrated in the many

indictments and convictions of members of organized crime groups that have resulted since the legislation was passed.

95. The Mutual Legal Assistance Treaty signed between Italy and the United States in 1984 has been, according to both sides, a powerful instrument for attacking the international expansion of Italian organized crime groups in the United States and their collusive relationships with the American Cosa Nostra. In the same way, mutual legal assistance treaties between Italy and other European countries owe a great deal of their effectiveness to the fact that they start from this typology of crime.

96. Legislation on control of the proceeds of crime is another issue that requires attention. The process initiated by the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 ((E/CONF.82/15 and Corr.2) has gone through a series of important international interventions, such as the 40 recommendations of the Financial Action Task Force on Money-Laundering and of other intergovernmental organizations such as the Council of Europe's 1991 Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the European Commission Directive of the same year and the Organization of American States' recommendations for Latin and Central America. International cooperation and concerted global actions would benefit greatly from the consolidation, extension and improvement of this process.

97. Harmonization of anti-money-laundering legislation is a powerful tool, which can equalize the risk among countries where criminals attempt to launder the proceeds of their crimes and to invest them. Once they find a loophole in the legislation of some country, they are quick to exploit it. Dealing with this requires not only the introduction of the crime of money-laundering, but also every possible effort, through the instruments of criminal law, to ensure that financial and non-financial institutions comply with the duties assigned to them by numerous regulations, especially regarding the reporting of suspicious transactions. If the legislation foreseeing sanctions for failure to report these transactions were more compatible, it would increase the protection offered to financial systems and would consequently foster more effective action while providing world financial markets with a safe environment in which to grow.

98. The introduction of money-laundering as an offence, however, may not, by itself, be enough. The experience of its implementation in countries that have linked the money-laundering crime to the predicate offence of drug trafficking reveals serious limitations. The exclusive link of money-laundering to drug offences has limited the capacity of financial institutions and law enforcement agencies to begin a greater number of investigations and to cooperate in cases transcending borders. Extending the predicate offence to "all serious crimes" should be the starting point for equalizing law enforcement risk among countries and lend force to international cooperation.

99. Another area where it is essential that there be a consistent and strong commitment on the part of countries to make their legislation against transnational crime compatible is the internationalization of corruption. There is a growing realization of the need for more coherent and consistent international anti-corruption action. Recent recommendations by the Organisation for Economic Co-operation and Development provide guidelines for harmonizing national legislation for combating international corruption. Providing equal criminal treatment for domestic and international corruption is a matter of urgency. Therefore, countries should introduce into their domestic legislation measures such as the abolition of fiscal advantages that encourage domestic enterprises to corrupt foreign officials, and punishment for the corruption of foreign officials.[12]

100. Corruption is the bridge between economic and organized crime and it should be treated as a very serious threat. Corruption is usually accompanied by violence and these are the two methods organized

crime groups use to penetrate legitimate activities. Corruption is often the substance of other crimes, such as fraud committed by an enterprise to pay bribes and money-laundering crimes.

101. The quantity and quality of sanctions are often used as criteria for quantifying the "law enforcement risk". As incarceration and confiscation of the assets are the two types of sanction that can disrupt a criminal organization, it is extremely important that the definition of these sanctions, their implementation and their perception by organized crime groups are as homogeneous as possible in different countries. Obstacles to convergence of the type and quantity of sanctions stem from divergent cultures and structures of criminal justice philosophies. The length of imprisonment, for example, may differ substantially from one country to another, as well as the balance between protection of human rights on the one hand and security considerations on the other.

102. In contrast, asset forfeiture and seizure are effective sanctions that could easily be made compatible. Legislation in this area is relatively new and its key provisions should not be difficult to harmonize. Laws that provide for asset-sharing among countries that have participated in the same law enforcement operation are a powerful instrument in the hands of the law enforcement system. Although these laws may have encountered some problems, the experience in drug cases has nevertheless been a positive one and has been successful in soliciting cooperation between law enforcement agencies of different countries, thereby demonstrating that those laws are powerful instruments of international cooperation.

103. The structural difference between the procedural law of countries where the inquisitorial or accusatory system prevails have not proved to be an obstacle to international cooperation between them. The experience of mutual legal assistance treaties between countries with different systems has shown that mutual legal assistance in criminal matters is possible despite such differences. The same could be said for the differences between systems characterized by mandatory criminal action on the one hand, and discretionary power on the other hand.

104. These differences, however, may be irrelevant in terms of law enforcement risk for crimes committed by organized crime groups. It is possible that, in cases where law enforcement capabilities are weak, the inquisitorial system can be more useful because it produces evidence before the trial takes place at which the evidence is going to be discussed. In this sense, it can be said that the system is more "rigid", and there is no room for the criminals to influence the course of the proceedings.

105. The capacity of organized crime to intimidate those giving testimony can play a significant role in weakening the evidence discussed in trial. But this, and other side effects of the different systems that can be relevant in situations of threat against criminal justice systems, should be solved on a contingency basis without changing the principle of the parity of the parties in a trial.

106. The main problem in procedural law is that the methods for collecting evidence need to be made compatible in order to produce an equivalent quantity and quality of risk among countries. Domestic legislation, for example, may make use of modern techniques for tracing criminals and collecting evidence on their operations and on the organization itself. A reasonable balance can be found between the protection of privacy and the need of the law enforcement agencies to collect evidence through, for example, wiretapping and interceptions of telephone communication and electronic surveillance. Legislation providing for such methods, together with other law enforcement methods, such as undercover operations and controlled delivery, should be passed to enable law enforcement agencies to collect sufficient evidence to prove guilt beyond any reasonable doubt.

107. Another issue of high priority in the effectiveness of action against organized crime, and in the perception of organized crime groups of high risk, is the cooperation of witnesses and defendants with

the law enforcement authorities. The experience of countries where the organized crime risk is high proves that intimidation and violence against witnesses and cooperative defendants is resorted to because these figures play an essential role in providing information on the structure of the group and its activities. Legislation and programmes for offering protection and assistance to cooperative witnesses and their relatives should therefore be an integral part of policies in each country that is having to deal with organized crime.

108. It is also essential to provide these people with a change of identity and to relocate them during and after the trial. Financial assistance, when possible, helps to overcome the difficulties they face as a result of cooperating with the criminal justice and law enforcement system.

109. As already mentioned, legislation allowing the use of new means of law enforcement, such as electronic surveillance and undercover operations, in order for the investigation to be effective and keep pace with the continuous evolution of technology, requires that these operations be conducted with a high level of professionalism, to equalize the risk among different countries. Professionalism among law enforcement agencies requires not only appropriate qualifications and training but also organization, coordination and resources.[13]

110. The question of resources, and whether they can ever converge (always in relation to their investment in the criminal justice system) is, of course, perhaps the most salient issue. The factors involved include budgetary problems and priorities in general and in the different areas of the criminal justice system. The same can be said for coordination among different law enforcement agencies. It is universally recognized that close coordination improves effectiveness, but it is part of the daily experience of many countries that coordination among law enforcement bodies is difficult to achieve and to maintain. Similarly with the issue of organization, centralized or decentralized patterns of organization respond to cultural, traditional and managerial criteria that cannot be harmonized. Each country should find the best organizational solution, based on its own pattern, trying to make its actions as efficient and effective as possible. The matter could, however, be approached from a different perspective. Technical assistance could assist greatly in securing the convergence of resources. The provision of expert knowledge and experience through advisory services and training to countries in need would raise the level of response to the problem of dealing with organized transnational crime. Even if the quantity of resources does not increase significantly, particularly in countries with severe budgetary problems, the quality of such resources, especially human resources, will rise to appropriate levels.

IV. CONCLUSIONS AND RECOMMENDATIONS: AN AGENDA FOR INTERNATIONAL COOPERATION

111. Having examined how, after bilateral cooperation, regional and international cooperation can, in turn, help to secure an effective convergence of national policies against organized crime, and having identified the cases in which compatibility of policies could increase the law enforcement risk for organized crime groups, thereby making it more difficult for them to internationalize their activities, the next step is to draw up an agenda for international cooperation.

112. The first step towards convergence should be achieved through regulatory and crime control legislation, establishing under domestic law, policies of demonstrated effectiveness that do not generate problems of compatibility where the legal systems differ, but that actually facilitate cooperation between countries. The second step should be the enhancement of law enforcement capabilities in terms of professionalism and technology.

113. In any agenda for international cooperation the regulatory measures necessary to obtain maximum transparency of financial systems and to prevent monopolies should not be neglected.

114. Consideration is to be given to specific offences for crimes committed by criminal organizations. These could be membership in a criminal organization or participation in the affairs of a criminal enterprise, or other forms of conspiracy especially directed at the organizational aspects of the crimes committed.

115. Furthermore, measures should be addressed to the proceeds of crime, for example by enacting legislation that provides for forfeiture and confiscation of the assets of criminal origin, possibly including provisions for asset-sharing among countries participating in the same law enforcement operation. Introducing the criminal offence of money-laundering and extending it to the activities of laundering and investing proceeds of all serious crimes would be an essential step. Intentional omission or failure to report suspicious transactions on the part of banks and non-banking financial institutions could also be considered a criminal offence.

116. Other proposals that could be discussed and evaluated include increasing the severity of the offence in cases of crimes of domestic and international corruption, removing all financial and economic advantages of domestic enterprises obtained by corrupting public officials abroad, and extending the crime of corruption to the corruption of foreign public officials by national enterprises. This is particularly important in view of their great potential usefulness in mutual law enforcement assistance.

117. The agenda could also include the introduction of legislation allowing law enforcement agencies to conduct wiretapping, electronic surveillance and undercover operations. The ability of criminals to exploit high technology resources has to be matched by at least an equivalent law enforcement action. It is therefore essential to provide law enforcement agencies with the minimum required technology for wiretapping and electronic surveillance, together with standardized software for databases to be used for tactical and strategic intelligence.

118. The levels of sophistication reached by transnational criminal organizations in dealing with financial schemes means that the law enforcement agencies must be provided with specific training to deal with financial investigations.

119. The first and second steps require substantial international cooperation. Technical assistance programmes coordinated multilaterally and implemented both multilaterally and bilaterally, through different approaches, can provide the means of equalizing the law enforcement risk among countries as much as possible. These programmes must be coordinated if they are to produce effective results with greater cost efficiency. Regional or country-specific masterplans should be formulated, paying careful attention to the different needs of countries.

120. Any assessment of needs should not only consider the lack of policies and resources for achieving the points established in this agenda but should also assess the degree of flexibility of the juridical system where these policies are going to be applied. This would avoid possible rejection by the criminal justice system because of problems of internal compatibility. Convergence is a lengthy process and can only be achieved if there is a clear awareness of the initial differences that have to be decreased or accommodated.

121. International cooperation against organized transnational crime, which not only disregards the power and authority of the law but, as one of the main characteristics of its modus operandi, systematically breaches it, should be based on the collective feeling and understanding of the phenomenon from all those who belong to the community of nations.

122. In a certain sense, the pervasiveness of organized transnational crime may be compared to the threat from the deterioration of the environment or, even better, from the uncontrolled use of nuclear power. In 1986, at the time of the Chernobyl disaster, the world was forced to come to terms, for the first time ever, with the true extent of the dangers posed by a neglected activity, one which, because of its inherent volatility, might not be confined to borders that existed only on maps. Just as the repercussions of that explosion affected the people and environment of more than one country, the international community can no longer overlook the dangers of organized transnational crime, which is not hindered by national borders, and even profits from them because the borders may actually obstruct the rule of law.

123. To come to a common understanding and to collaborate in the fight against transnational organized crime does not mean that the distinct aptitudes and juridical cultures existing within the international community should be ignored. Nor does it mean endangering the sovereignty of States. On the contrary, since that sovereignty is challenged by criminals operating in a systemic fashion, the response to them needs to be structured and collectively shared.

124. The United Nations, because of its general mandate and international constituency, provides an appropriate forum in which a common understanding and global action can be promoted. Starting with the general need for exchanging information on organized crime patterns, on legislative provisions and on organizational structures of individual countries, the United Nations has been given a special responsibility to improve countries' capacities to combat this scourge, by enhancing the development of technical cooperation with countries in need of assistance.

125. Certainly, international cooperation will only be possible if the factors limiting it are eliminated. Among these factors, the lack of relevant cooperative arrangements emerges as the first problem, particularly in reference to extradition and mutual assistance in investigation and the gathering of evidence. The elaboration of new agreements providing for adequate assistance in combating organized crime, as well as the improvement and updating of existing treaties, would rapidly lead to the creation of a network of legal instruments that would make it possible to avoid delays or misinterpretation when assistance was sought. In this light, the United Nations model treaties could serve as a basis for the initial exercise. Of course, since the nature of organized crime is multiform and unpredictable, those models may have to be adapted to the various settings where they will be applied.

126. In cases in which transnational organized crime targets developing countries or countries in transition and their economic, political and social order, technical cooperation becomes essential for providing assistance in drafting penal laws appropriate for fighting organized crime, as well as in training law enforcement personnel, who will be called upon to apply new legislation and instruments and to cooperate with enforcers from other countries.

127. The higher the degree of consistency of these arrangements with both domestic realities and the tools available in other countries, the more effective international cooperation against transnational organized crime will be. Needs assessment may therefore be the preliminary step for further action by the United Nations, and other international organizations engaged in this area. Nevertheless, assistance also means financial and economic aid, with sufficient resources provided for technical cooperation activities.

128. Although there is no shortage of measures to be implemented, it is worth highlighting the importance of pursuing the goals step by step, without trying to target a prey that is unreachable. In other words, any discussion on sensitive issues, such as those concerning matters of domestic and international security, could be approached rationally and pragmatically.

129. The high-ranking participants in the World Ministerial Conference are well aware of the urgent needs and constraints of many countries, and have a unique opportunity to set up a programme for concerted action to strengthen regional and interregional cooperation. By taking into consideration national concerns regarding the consequences of organized crime, it is hoped that the Conference will be able to devise a more effective global strategy, building upon the statement of principles and pro-gramme of action adopted by the Ministerial Meeting on the Creation of an Effective United Nations Crime Prevention and Criminal Justice Programme (General Assembly resolution 46/152, annex), and adding a new decisive chapter to the history of international cooperation against organized transnational crime.

Notes

[1]See Sixth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Caracas, Venezuela, 25 August-5 September 1980: Report Prepared by the Secretariat (United Nations publication, Sales No. E.81.IV.4).

[2]See Seventh United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Milan, 26 August-6 September 1985: Report Prepared by the Secretariat (United Nations publication, Sales No. E.86.IV.1), chap. IV, sect. A, para. 66.

[3]Ibid., chap. I, sect. A.

[4]Ibid., para. 6.

[5]See Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders, Havana, 27 August-7 September 1990: Report Prepared by the Secretariat (United Nations publication, Sales No. E.91.IV.2), chap. IV, sect. C.

[6]Ibid., chap. I, sect. C.

[7]Official Records of the Economic and Social Council, 1992, Supplement No. 10 (E/1992/30), chap. I, sect. C, resolution 1/2.

[8]Official Records of the Economic and Social Council, 1994, Supplement No. 11 (E/1994/31), chap. I, sect. C, resolution 3/2.

[9]See Muller-Rappard and Bassiouni, European Inter-State Co-operation in Criminal Matters, 2nd ed., 1993.

[10]Report of the Secretary-General on the strengthening of international cooperation in combating organized crime (A/47/381).

[11]C. Van den Wyngaert, "The political offence exception to extradition", in Acts of the International Seminar on Extradition (Siracusa, Italy, 4-9 December 1989); see also C. Van den Wyngaert, "Rethinking the law of international criminal cooperation", in Principles and Procedures for a New Transnational Criminal Law (Eser & Lagodny, eds., 1992).

[12]P. Bernasconi, "The necessity for an International Convention Preventing and Combating the Corruption of Public Officials", Rivista Trimestrale di Diritto Penale dell'Economia, vol. VI, No. 4 (1993), p. 1138.

[13]On the question of professionalism and the need for adequate coordination, see G. Falcone, Cose di Cosa Nostra, chap. VI, Potere e Poteri (Rizzoli, 1991).